

Petrosyan (Migration) [2021] AATA 3737 (6 September 2021)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mr Narek Petrosyan
CASE NUMBER:	1803077
HOME AFFAIRS REFERENCE(S):	BCC2016/978929
MEMBER:	David Barker
DATE:	6 September 2021
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner) visa: • cl 820.211(2)(a) of Schedule 2 to the Regulations • cl 820.221(1)(a) of Schedule 2 to the Regulations

Statement made on 06 September 2021 at 7:37am

CATCHWORDS

MIGRATION –Partner (Temporary) (Class UK) visa – Subclass 820 –long-term genuine relationship – parties validly married – genuine married relationship – mutual commitment to a shared life together – evidence provided – decision under review remitted

LEGISLATION

Migration Act 1958, ss 5F, 65

Migration Regulations 1994, rr 1.03, 1.15, Schedule 2, cls 820.211, 820.221

CASES

He v MIBP [2017] FCAFC 206

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Home Affairs to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s 65 of the *Migration Act 1958* (Cth) (the Act).
2. The applicant applied for the visa on 4 March 2016 on the basis of his relationship with his sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl 820.211 because they were not satisfied the evidence before them demonstrated that the applicant is a spouse or de facto partner of the sponsor, as defined under ss 5F and 5CB of the Act.
4. The applicant appeared before the Tribunal, by video conference on 4 August 2021 to give evidence and present arguments. The Tribunal is satisfied it was reasonable to hold a hearing through video in the context of the coronavirus pandemic, having regard to the nature of this matter and the individual circumstances of the applicant. The Tribunal was mindful of the need to minimise health risks to the parties and Tribunal staff that could arise at the present time in an in-person hearing. The Tribunal received an indication from the applicant that he was comfortable with the hearing proceeding utilising this technology platform. The Tribunal also received oral evidence from Ms Natalie Virginian Evanian, Ms Shoushan Navasardian, Ms Yeranouhi Petrosyan and Ms Gallina Della Ross. The Tribunal hearing was conducted with the assistance of an interpreter in the Armenian/East Armenian and English languages.
5. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

BACKGROUND

6. The applicant is a national of Armenia and is 27 years of age. His parents and an older sister reside in Armenia. He has an uncle and other relatives in Australia. The applicant has no previous marriages, but came to Australia on 30 November 2015 on a subclass 300 Prospective Marriage visa, for which he was sponsored by his fiancée, a person other than the current sponsor. He contends that his relationship with that person ceased approximately two weeks later, on 15 December 2015.
7. Witness declarations and the parties' statements indicate that the families of the parties have known each other for many years. The parties claim to have met in March 2014, when the sponsor was visiting Armenia.
8. The parties contend that they made a commitment to a shared life together to the exclusion of all others on 12 January 2016 and were subsequently married on 13 February 2016.
9. The parties provided documents to the Department in support of the application including but not limited to:

- Engagement and valentine's cards;
 - Centrelink account profile of sponsor;
 - 2 x Tax invoice from Jenolan Caves House
 - NSW Births, Deaths and Marriages, Marriage Certificate;
 - Witness support declarations; and,
 - photographs.
10. In the delegate's Decision Record, a copy of which the review applicant provided to the Tribunal, the delegate was not satisfied that the evidence regarding the different aspects of the parties' relationship demonstrated they were in a genuine spousal relationship.
11. Prior to the hearing the Tribunal received further documentary evidence including:
- Statutory declaration from Galina Della Ross dated 14/02/2018;
 - Statutory declarations from the applicant , sponsor and witnesses;
 - Letter from psychologist of sponsor's mother;
 - photographs;
 - bank account statements, superannuation information and other financial records;

CONSIDERATION OF CLAIMS AND EVIDENCE

12. The issue in the present case is whether the visa and review applicants were in a genuine spousal relationship at the time of application and continue to be in a genuine spousal relationship at the time of this decision.
13. In making its findings, the Tribunal has considered documents contained in the Department and Tribunal files, as well as the oral evidence provided by the applicant, sponsor and witnesses at the hearing. The Tribunal found that the applicant, sponsor and witnesses provided their evidence at hearing in a coherent, plausible and reasonable manner. The Tribunal is satisfied that the oral evidence at hearing is consistent with the documentary evidence available for the Tribunal's consideration. The Tribunal is satisfied that the, applicant, sponsor and witnesses are a reliable source of information with regard to the parties' relationship and that other witnesses at hearing can be regarded as providing credible evidence to the Tribunal.
14. Of particular note, the Tribunal has placed weight on the evidence of Ms Gallina Della Rosa, a migration agent who assisted the applicant in relation to the Partner visa application. Ms Della Rosa told the Tribunal that she blames herself for their being inadequate and insufficient evidence regarding the parties' relationship being provided with the visa application. Ms Della Rosa explained that her child died around the time of the visa application and that this constrained her ability to assist properly with the visa application. She further stated that she has known the parties for a number of years and can attest to the genuine nature of their relationship.

Whether the parties are in a spouse or de facto relationship

15. Clauses 820.211 (2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen.
16. 'Spouse' is defined in s 5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s 5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in reg 1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in reg 1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

17. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship. The Department was provided a copy of an NSW Births, Deaths and Marriages, marriage certificate indicating the parties were married in North Sydney in February 2016. The Tribunal has no cause to doubt the authenticity of this document. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s 5F(2)(a).

Are the other requirements for a spouse relationship met?

18. Financial aspects of the relationship

19. The Tribunal has considered the financial aspects of the relationship, including joint ownership of assets; joint liabilities; extent of pooling of financial resources; any legal obligations owed to the other party; and any sharing of day-to-day household expenses.
20. The parties gave evidence that to date they have no shared property assets, but intend to try and purchase a residential property once the applicant's visa situation is sorted out. They have no shared liabilities, or legal obligations towards each other. The applicant indicated that they are the beneficiaries of each other's superannuation policies.
21. The applicant gave evidence at hearing that he and the sponsor operate a joint account from which they pay for groceries, phone bills, insurance and other such expenses. He said that his employment earnings go into this account and that whilst the sponsor maintains her individual bank account, which she has operated for a number of years before the parties met, she transfers funds into the joint account, from her individual account as required to meet necessary expenses. The sponsor provided consistent oral evidence with respect to this issue and the Tribunal notes the parties claims at hearing are consistent with the bank record and other documentary evidence that is now available to the Tribunal.
22. The applicant gave evidence at hearing that he perceives that it is his responsibility to contribute what he can, towards both regular expenses and towards saving enough money so that the parties can purchase a home. He indicated that he feels this is his responsibility and that this reflects traditional Arminian culture. He estimated that at the present time the

sponsor has approximately \$20,000 in an online savings account linked to her individual account, whereas he has around \$60,000 in the online account linked to the joint account. The sponsor gave evidence that the parties share financial goals and whilst she is also influenced by traditional Armenian culture, she has grown up in Australia and also considers it important for a woman to maintain an appropriate degree of independence and that her maintaining her individual bank account reflects her view with regard to this factor.

23. The parties explained that they reside with the sponsor's cousin, Ms Shoushan Navasardian, and are not charged rent, or for utility costs. They gave consistent evidence that they do contribute groceries, but that the generosity of the applicant's cousin is grounded in traditional Armenian culture and that it is assisting them save the deposit that will allow them to buy a residential property of their own.
24. In considering the financial aspects of the parties' relationship, I note that considerably more evidence is now before the tribunal, than was available to the delegate at the time of their decision. I am satisfied the parties claims at hearing with regard to this factor is consistent with the documentary evidence that they have provided. I am satisfied the applicant provided plausible explanation for a representative amount of transactions in the bank records provided in association with the review application. I am satisfied the parties have provided a reasonable and plausible explanation with regard to how they pool their finances and of the basis on which their regular expenses are met. The Tribunal finds that the financial aspects of the relationship support a finding that they have a mutual commitment to a shared life together as spouses. The Tribunal has given weight to this aspect of the parties' relationship.

25. The nature of the household

26. The Tribunal has considered the nature of the household, including: any joint responsibility for the care and support of children; the parties' living arrangements; and any sharing of housework.
27. The parties do not have any joint responsibility for the care and support of children. In relation to this factor, the sponsor gave evidence at hearing that the parties are delaying starting a family until the visa uncertainty is resolved. She said that this is because she would not want to try and raise a child in Armenia if that was where the parties have to live if the applicant cannot get a visa to live with her in Australia.
28. With regard to their living arrangements, the applicant gave evidence that after their marriage the parties initially resided in the home of a first cousin, in North Ryde. He said that this was from March 2016 until 2018, at which time his cousin moved to Bayview, in the Northern Beaches area of Sydney. The applicant gave evidence that he and the sponsor made this move to the Northern Beaches with his cousin and his cousin's family. He indicated that he and the sponsor moved back to Ryde, to the home of Ms Navasardian, in 2019 when he started working with Ms Navasardian's husband. He told the Tribunal that the parties will remain residing with Ms Navasardian and her family until they can afford to buy and move into their own residential property.
29. With regard to the sharing of housework, the parties gave consistent evidence that the division of labour is quite traditional, with the sponsor and Ms Navasardian attending to tasks within the house, such as cooking and cleaning, and that the men in the household have responsibility for yard work and home maintenance.
30. In considering the nature of the parties' household arrangements, the Tribunal notes the oral evidence at hearing with respect to their living arrangements is broadly consistent with residential details evident on the documentary records available in the Department and

Tribunal files. The Tribunal is satisfied the applicant gave a plausible account of the parties' living arrangements since the time of their marriage and that inconsistency noted by the delegate with respect to responses given on incoming passenger cards can be reasonably explained by the residential history provided by the applicant at hearing.

31. the Tribunal is satisfied that there is nothing unduly untoward in the evidence before it with regard to the parties' current and proposed household arrangements. The Tribunal is satisfied that the nature of the parties' household arrangements supports a finding that they have a mutual commitment to a shared life together as spouses. The Tribunal has given weight to this aspect of the parties' relationship.

32. The social aspects of the relationship

33. The Tribunal has considered the social aspects of the relationship, including whether the parties represent themselves to other people as being married to each other; the opinion of friends and acquaintances about the nature of the relationship; and any basis on which the persons plan and undertake joint social activities.
34. The evidence provided by witnesses, both through declarations and oral evidence at hearing supports the claim that the parties present to family, friends and members of their community as a married couple.
35. The Tribunal has reviewed photographs of the parties' wedding and those taken in a variety of contexts. The Tribunal is satisfied these show the parties together in the company of other people in a manner which is consistent with their representation to these other people as a married couple.
36. The Tribunal finds that the parties represent themselves as being married to each other and this relationship is recognised by their friends and family. I am satisfied that they participate, so far as is possible in the context of the current pandemic, in joint social activities with their families, as evidenced by the photographs they have provided and the evidence provided by witnesses to the Tribunal. The Tribunal finds the social aspects of the relationship support a finding that the parties are in a genuine and continuing relationship and have a mutual commitment to a shared life together to the exclusion of all others.

37. The nature of the persons' commitment to each other

38. The Tribunal has considered the nature of persons' commitment to each other, including: the duration of the relationship; the length of time they have lived together; the degree of companionship and emotional support they draw from each other; and whether they see the relationship as long-term.
39. The delegate noted that the applicant came to Australia in November 2015, on the basis of a stated intention to marry a person other than the sponsor and they married within proximity to the claimed dissolution of this previous relationship. With respect to this issue the applicant gave oral evidence at hearing that he first came to Australia in 2013, at which time he and the sponsor met, as their families knew each other and the families were active members of the local Armenian community in Sydney. With respect to the previous relationship, the applicant indicated he met his previous fiancé when she visited Armenia in 2015 and was happy with the prospect of coming to Australia to live when a relationship developed. He said that his previous fiancé told him that she did not want to continue with the relationship after he had been in Australia for only a matter of three weeks and that he found this very difficult and disconcerting. The parties gave consistent evidence that the sponsor offered him support during this difficult period and that they developed feelings for each other. As to the rapidity of their courtship, the parties gave consistent evidence that

this is not unusual in traditional Armenian culture and that once parents and other significant relatives give approval to the relationship, parties quickly proceed to marriage.

40. The parties have been married for over five and a half years and have resided together throughout this period. The Tribunal has accorded positive weight to these factors. For more than brief periods during that period, the Tribunal is satisfied that their relationship can appropriately be regarded as long term and accordingly gives some positive weight to this factor.
41. The photographs provided with the review application include many in which the parties are together, without the company of other people. Whilst such photographs do not evidence how they represent themselves to other people, in the particular circumstances of this case, the Tribunal is satisfied they show the applicant and sponsor at ease in each other's company. The Tribunal has given some positive weight to this factor.
42. The Tribunal is satisfied the parties provide emotional support and companionship to each other. The Tribunal accepts the evidence of the parties that they see their relationship as long term.
43. The Tribunal is satisfied that the evidence supports a finding that the parties have a mutual commitment to a shared life together to the exclusion of all others. The Tribunal is satisfied that their relationship is genuine and continuing.

44. Conclusions on spouse criteria

45. Having regard to all the circumstances of this relationship, the Tribunal is satisfied that the applicant and his sponsor married in February 2016 and they are in a genuine and continuing relationship, that they have a mutual commitment to a shared life to the exclusion of all others, and that they live together, or not separately and apart, on a permanent basis.
46. Given these findings the Tribunal is satisfied that at the time the visa application was made and at the time of this decision the parties were in a spousal relationship.
47. On the basis of the above the Tribunal is satisfied that the requirements of s.5F(2) are met at the time the visa application was made and at the time of this decision.
48. Therefore the applicant meets cl 820.211(2)(a) and 820.221(1)(a).
49. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 820 visa.

DECISION

50. The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner) visa:
 - cl 820.211(2)(a) of Schedule 2 to the Regulations
 - cl 820.221(1)(a) of Schedule 2 to the Regulations

David Barker
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).